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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Ezequiel Castro, Aurora Adames,
Ramon E. Castro, Ida L. Castro,

Petitioners,

v.

Puerto Rico Highway and Transportation Authority,
Fernando Fagundo, Héctor López-García,
Las Piedras Construction (L.P.C. & D.) (Third-Party),

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an improper immunity has been effectively created for a state highway authority; thereby allowing the state and its contractors to jointly unleash a continuing over-arching policy of disregard and violation of citizens' Civil Rights protected by the Constitution of the United States of America.

2. Further, whether the situation has deteriorated into a State of Lawlessness which has compromised the state courts; and which has suppressed the constitutional right to the Equal Protection of the Law as established in *Willowbrook v. Olech*, 528 US 562 (2000) –as well as in numerous other provisions of law applicable to the case at hand.

3. Moreover, whether such improper immunity has led to the deprivation of citizen's right to seek the protection of the Federal Courts under 42 USC §1983 and as guaranteed by the Seventh Amendment to U.S. Constitution.

PARTIES TO THE PROCEEDINGS

In the relevant decision the Court of Appeals for the First Circuit addresses case 04-2324 JAF from the lower District Court.

The Petitioners are Ezequiel Castro et al [the elderly couple, Ezequiel Castro (91) and his spouse Aurora Adames (87), died during the lengthy proceedings; they are substituted by his son, Ramon Castro; and his daughter, Ida Castro].

The Respondents in case 04-2324 JAF are the Puerto Rico Highway and Transportation Authority (hereinafter **PRHTA**); Mr. Fernando Fagundo (former Executive Director of PRHTA, and subsequent Secretary of the Puerto Rico Department of Transportation and Public Works); Héctor López-García (state judge); Las Piedras Construction (LPC& D) (construction contractor and Third-Party defendant); and the relevant conjugal partnerships.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Ramon Castro and Ida Castro are the surviving members of Castro family; and thus join in a common cause and a common position to respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case. (See statement App- 3)

OPINIONS BELOW

The opinions of the First Circuit (App- 4) and the district court (App-9-22) are unpublished.

JURISDICTION

The court of appeals issued its opinion in Appeal 05-1942 on September 14, 2006. This COURT has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The situation at hand is a civil rights action under 42 USC §1983. The deprivations have occurred as part of systemic policy or continuing violation; that in turn encompasses a number of statutes and regulations (See App-64). However, the core issues revolve upon the Equal Protection Clause of the Fourteenth Amendments; the right to Trial by Jury guaranteed by the Seventh Amendment and ultimately the guarantees of the First Amendment.

STATEMENT OF THE CASE

1. Ms. Rosa Parks has become an icon of Liberty for all American citizens. She was not a wealthy and influential person; she was not a famous orator or a political figure; nor was she an attorney espousing some novel and arcane legal theory –in fact, she acted in defiance of the law (albeit an unjust and oppressive regulation). In contrast, Ms. Parks' story represents the courageous action of an American citizen who would not

tolerate the deprivation of her Constitutional Rights and/or the denial of basic notions of fairness.

Ms. Rosa Parks simply refused to sit in the back of the bus –an act that not only exposed her to the wrath of oppressive laws; but at that time could also unleash retaliatory action by a society in which discrimination was commonplace. Further, Ms. Parks' actions were doubly courageous due to the insidious nature of the situation: she did not yield to the pressure to conform and suffer abuses under the devious argument that this was only a "minor" issue; nor did she succumb to the well known aphorism that "you can't fight city hall".

It has since become clear that NO American citizen can be confined to the "back of the bus". The legacy of Ms. Rosa Parks transcends the fact that she was African-American; and proclaims that all Americans of every group, gender, locality or belief can demand that their Civil Rights be respected as part of the Equal Protection of the Law. Indeed, the enforcement of these Civil Rights gives real meaning to notion of Liberty; which otherwise would wither as merely a collection of noble platitudes.

2. We address the highest court of this nation as *pro se* litigants; and are well aware that the COURT must allocate its resources to matters of fundamental and/or national importance. Yet we address the COURT in the spirit of citizens such as Ms. Rosa Parks and others who cry out for the protection of their civil liberties –a paramount concern. We also note that Mr. Clarence Earl Gideon, a prisoner acting *pro se* and without formal legal training or extensive education, submitted a handwritten petition that was granted –and which led to the important decision in *Gideon v. Wainwright*, 372 US 335 (1963).

3. The plaintiffs have repeatedly stated that the situation at hand should have never happened. In the situation at hand there is no controversy with the law; rather, matters are straightforward, and involve the plaintiffs' undisputed constitutional rights and property interests. The state had only but to heed the very laws,

regulations, professional standards, and even basic notions of fairness that were intended to protect the plaintiffs in the first place.

Moreover, the situation at bar addresses an even more fundamental issue in which citizens can be altogether deprived of their right to "have their day in court" —all of which is in contravention to fundamental constitutional provisions; and to the existing doctrine set forth by this Honorable COURT.

4. The matters at hand also bear a close relationship to *Willowbrook v. Olech*; in which this COURT found that an elderly couple had been deprived of the Equal Protection of the Law by government actions that were "irrational and wholly arbitrary".

5. The similarities with *Willowbrook v. Olech* involve both the application of the law, as well as the material facts themselves. Like the Olech family in *Willowbrook v. Olech*, the Castro family was also a retired elderly couple and even more senior than the Olechs: Ezequiel Castro was 91 years old and his wife, Aurora, was 87. In view of the health problems associated with their age, the elderly couple has only been able to confront the burdens of this litigation through the efforts of their only son who lives in Puerto Rico: Mr. Ramon E. Castro – another similarity with *Willowbrook v. Olech* in which the senior Olechs received support from the neighboring Zimmer family, which consisted of their daughter and son-in-law.

As in the situation at hand, in *Willowbrook v. Olech* the Olech family's land was flooded by storm-water from a culvert and other improper drainage facilities constructed by the state. The litigation surrounding that improper drainage extended from 1989 to 1997; unfortunately, the elderly Mr. Thaddeus Olech, 76, died in the midst of the litigation. In yet another sad and unfortunate similarity with the aforementioned case, Plaintiff Ezequiel Castro, 91, died without ever receiving his day in court in two pending federal cases (at that time 00-1970 RLA, 03-1287

RLA) –and these issues have yet to be addressed in the courts. Furthermore, the situation continued to deteriorate; and the widow, Aurora Adames has also died without ever receiving her "day in court". Moreover, the defendants have protracted the litigation at the Federal Court; which now spans over six (6) years of needless controversy; and now encompasses four (4) separate and distinct cases [00-1970 RLA, 03-1287 RLA, 04-2324 JAF, and case 06-1313 FAB (CCC)].

6. The Castro family has held the property surrounding their home for over four (4) decades. The state planned a major highway that was to affect a portion of this property –however, the Castro family has never opposed the roadway or the use of this parcel of their land. Indeed, what the Castro family has vehemently opposed are the wanton deprivations of their undisputed constitutionally protected rights; which do not in any way impede the highway project –especially in regard to the Castro home and the *remainder* of the Castro property.

7. Despite decades of expenditures on engineering studies, the state's failure to properly plan became manifest by its attempt to evade the requirements of environmental law. In April 2000, the Supreme Court of Puerto Rico in *Colón-Cortés v. Pesquera*, 2000 WL 424713 chastised both the Puerto Rico Highway and Transportation Authority (hereinafter **PRHTA**) and the Environmental Quality Board (hereinafter **EQB**) for the failure to establish a proper Environmental Impact Statement (**EIS**); furthermore, construction of the highway project was permanently enjoined. At that time the Castro family had already protested the state agency's deprivations involving Due Process and the Equal Protection of the Law –most particularly in regard to the remaining property, which supposedly was to remain free of damages and/or intervention. Moreover, the adverse environmental impact of flooding from the highway project had also become manifest.

8. In light of the needless and repeated controversy since 1996; of the state's repeated rejection of the Castro family's entreaties; and of its refusal to correct the situation despite the evidence available; the Castro family sought the protection of the federal district court in July 2000 in case 00-1970 RLA.

The District Court itself in case 00-1970 RLA [Docket-No. **68**] summarized the Castro family's claims as involving two (2) major areas: a Pre-Deprivation Due Process Violation; and the Improper Drainage. Further, the Castro family's pleadings have noted that the state's transgressions are not isolated incidents; rather, they constitute a continuing and systemic Over-arching Policy of Callous Indifference to Citizens' Civil Rights.

9. Thus began a six (6) year travail of litigation in an ever-deteriorating situation at the District Court. The continuing and systemic nature of PRHTA's deprivations has become manifest in a series of ever-more-brazen actions that have sought to improperly delay and evade federal jurisdiction; and to simply deprive the Castro family of the Equal Protection of the Law. In turn, as noted previously, this has led to four (4) separate and distinct cases involving different parties; different actions; different issues; all of which occurred in different time periods –and consequently, different remedies were involved (see App-66). Indeed, the cases are not only separate and distinct, but are in fact *contradictory*; which only compounds PRHTA's improprieties –and which calls for a Judgment by DEFAULT against all Codefendants.

10. The record will show that neither PRHTA nor any of the other defendants have fully answered *any* of the complaints in *any* of the aforementioned cases [00-1970 RLA, 03-1287 RLA, 04-2324 JAF, and case 06-1313 FAB (CCC)]. In fact, to this date, none of the defendants has fully addressed, much less refuted, *any* of the issues set forth by the Castro family in those cases –all of which therefore remain unopposed. Indeed, throughout six (6) years of litigation the lower courts have also failed to

provide *any* decision that addresses the original issues regarding neither the Pre-Deprivation Due Process Violation nor the Improper Drainage (e.g. 12 LPRA §701; 31 LPRA §1711) –nor *any* other of the issues set forth in the Complaints.

11. The NON-respons by the lower courts to the issues at hand was repeatedly protested by the Castro family; notably in Petition for Writ of Certiorari 05-180 – but unfortunately to no avail.

At the time the initial case 00-1970 RLA was filed, construction of the highway project was enjoined. Therefore, there was ample opportunity to address all issues without any impediment to the roadway. Unfortunately, what ensued was years of inaction and delay at the District Court. Indeed, to this date the Codefendants have withheld Discovery in violation of FRCivP Rule 26; and have not provided public information in violation of 32 LPRA §1781 –and throughout cases 03-1287 RLA and 04-2324 JAF there was no Discovery *at all*. Further, in 2003 the Castro family petitioned for Mandamus 03-1453 in order to obtain some of this information, only to be rebuffed by the First Circuit.

In effect, the District Court repeatedly abandoned its jurisdiction; thus allowing PRHTA and the Codefendants to run out the courtroom door and proceed with a *fait accompli*. For example, in the original case 00-1970 RLA [Docket-No. **145**], and in contravention to the doctrine set forth in *Patsy v. Board of Regents*, 457 U.S. 496 (1982) ("exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to §1983"), the District Court refused to exercise its jurisdiction regarding a new Environmental Impact Statement advanced by PRHTA. Such evasion gave rise to a new case 03-1287 RLA in order to address the environmental issues the Codefendants were attempting to evade.

12. Throughout the entire period of protracted litigation, PRHTA and the entire PR-66 highway project have been involved in controversy and chaos on many fronts. As noted previously, in April 2000 *Colón-Cortés v. Pesquera* had enjoined the entire project essentially for collusion between PRHTA and the EQB resulting in the failure to provide a proper Environmental Impact Statement. Further, the Codefendants themselves subsequently admitted that there had been drainage problems "'all along the route" (e.g. Complaint 03-1287 RLA Sec. III-A.-9) –yet in contravention of 12 LPRA 1136(e) (among others) such adverse environmental impacts were *not* included in the new so-called Environmental Impact Statement. On another front, one of the highway overpasses collapsed; and Codefendant Fernando Fagundo was quoted as proclaiming that the PR-66 highway project was "cursed". (see Appeal 05-1592 Castro-Brief sec. 1.3.9)

On yet another front, the entire PR-66 highway project was enjoined yet a *second* time: in *Ferrovial-Agromán v. Fagundo*, 03-1810 JP, PRHTA and Codefendant Fernando Fagundo were sued and enjoined for alleged improprieties in the process of assigning the construction contract to Las Piedras Construction (LPC&D) –who PRHTA also proposed as a Third-Party defendant in the situation at hand. This matter becomes more troubling in light of *USA v. Vazquez-Botet et al*, 04-0160 JAF, in which the principal of LPC&D testified to participating in bribery in order to secure state contracts; which in turn contributed to the conviction of those defendants. What is more, PRHTA's situation is compounded by revelations that the Federal Highway Administration (**FHWA**) declared that PRHTA constituted a "high-risk" of malfeasance of federal funds. (see Appeal 05-1592 Castro-Brief sec. 1.3.9)

13. It is this background that gives rise to the issues surrounding Complaint 04-2324 JAF and the subsequent Appeal 05-1942 –which are the focus of this presentation. The two (2) previous cases [00-1970 RLA,

and 03-1287 RLA] are encompassed by Petition for Writ of Certiorari 05-180; and at this writing, case 06-1313 FAB (CCC) is *sub judice* at the District Court.

14. The issues in case 04-2324 JAF are new, separate and distinct from the previous cases; further, they are most obviously *subsequent* to –and separated by years from– the previous Complaints. Moreover, case 04-2324 JAF stands in stark contradiction to matters that were previously well established under the law.

Once again, the Castro family never opposed the highway as such; and in fact the land needed for the roadway was *specifically* agreed upon with PRHTA in January 1997. In particular, the Castro home would be spared; and would be provided with a buffer zone from the highway. Further, this agreement was *confirmed* when PRHTA took possession of the relevant parcel in 1998 –and despite the controversies in state case KEF 98-904.

15. More importantly, upon advice of counsel a Physical Demarcation (31 LPRA §1211-1212) was requested in 1998. In January 2000 the Physical Demarcation took place; and was duly witnessed by the PRHTA and the relevant parties and attorneys. In essence this is a legally binding Action for Quiet Title, which *again confirmed* the previous agreement of January 1997. Furthermore, it confirmed that PRHTA was already in possession of the parcel it required; and therefore PRHTA was legally *estopped* from intervening or inflicting damage upon the remainder of the Castro property. In fact, after more than five (5) years of litigation case KEF 98-904 was closed in November 2003 in accordance with the agreement of January 1997 and the Physical Demarcation; and during all those years PRHTA made no objection whatsoever against such Physical Demarcation. (see Definitions App-70)

16. Thus, it is completely incongruous, arbitrary and irrational that in 2003 PRHTA and its contractor LPC&D suddenly launched attempts to invade and intervene upon the *remainder* of the Castro property;

particularly in the vicinity of the Castro home. Here was a new situation; and in light of the aforementioned Physical Demarcation PRHTA's actions were clearly illegal; as well as vindictive and retaliatory in nature. In case 03-1287 RLA a Hearing, Temporary Restraining Order (TRO), and appropriate Discovery was requested in order to ascertain the true nature of PRHTA's actions; which at that point appeared to be mainly a hindrance to the proper disposition of the existing cases that were *sub judice* at the time.

Unfortunately, in case 03-1287 RLA the District Court fell into a state of inaction and delay; and simply did not respond ANYTHING at all. Time and time again, the Castro family [03-1287 RLA, Dkt- **31, 41, 44, 45, 46, 50**] called for the intervention of the District Court –but to no avail. After five (5) months of inaction, in March 2004 the District Court belatedly denied the TRO and almost simultaneously fully dismissed *both* the cases (00-1970 RLA, 03-1287 RLA). In case 03-1287 RLA there was never so much as a scheduling conference –much less the requested Hearing.

Furthermore, upon Appeal 04-1604, 04-1635, the Court of Appeals itself *also* refused to listen to the Castro family: in July 2004 the First Circuit was asked to allow the Castro family an Injunction Pending Appeal; yet three months later, in October 2004, this additional request for temporary injunction was also denied without any form of Hearing.

17. Thus, confronted by the Physical Demarcation; confronted by the Appeals process in the federal forum; and confronted by the Castro family's protests in defense of their home and the remaining property; in 2004 PRHTA resorts to the manifest subversion of the State Expropriations Court. Despite the fact that the jurisdiction of State Expropriations Court is confined to the *single* issue of Just Compensation; despite the fact that the State Expropriations Court thereby has NO jurisdiction to alter matters established in the Physical

Demarcation; despite the fact that the federal courts have always held *original* jurisdiction in the relevant matters in case 04-2324 JAF; and most probably emboldened by the utter inaction and lack of response by the District Court in the previous cases; PRHTA and the Codefendants now attempt to altogether evade federal scrutiny by fraudulent misrepresentation and subversion of the state court –in order to obtain *bogus* state judicial enforcement of PRHTA's improprieties. Unfortunately, these improper actions found the willing participation of Codefendant Judge López-García of the state court.

18. As stated in Appeal 05-1942 Castro-Brief paragraphs 6.30-33, the subversion of the State Expropriations Court became manifest in November 2004 with what has been defined as the Unconstitutional Dispossession and Destruction of a portion of the remaining property in the vicinity of the Castro home. Here PRHTA attempted to arbitrarily and irrationally disregard the Physical Demarcation; to invoke an Improper Survey that had already been denounced previously under the *original* jurisdiction of the federal courts; and to conceal surreptitious changes made to the project. Further, PRHTA launched the outrageous proposition that they had yet to take possession under state case KEF 98-904 –something that had already taken place six (6) years *prior* to those contentions; was confirmed by the Physical Demarcation; and in fact, case KEF 98-904 itself had already been closed in 2003, that is, one year *prior* to PRHTA's *bogus* allegations.

Moreover, PRHTA confirmed and compounded its malicious intent by refusing to answer the Complaint; and brazenly requesting an "eviction order" in December 2004 –even while PRHTA itself had been served and was *sub judice* for this very same attempt at Unconstitutional Dispossession and Destruction. Further, Codefendant Judge López-García yet again confirms and compounds the subversion of the state court by acting as an accomplice, and granting a *Bogus* Eviction Order while he

himself was also *sub judice* for these very same improprieties. Codefendant López-García's actions were utterly without any jurisdiction whatsoever: not only did he lack any jurisdiction to alter the provisions of the Physical Demarcation (an action for quiet title under 31 LPRA §1211-1212); but also Codefendant Judge López-García had been made fully aware of the situation, and in fact he had *forever removed himself* from all jurisdiction by closing case KEF 98-904 a year earlier in 2003. The *Bogus* Eviction Order is on record (e.g. Castro-Brief App-182-187); and is so deficient that a glance will reveal that it does not even identify the *additional* land it proposes to take. The Castro family has repeatedly stated that the *Bogus* Eviction Order alone is more than ample grounds for a Judgment by DEFAULT against the defendants.

19. Similarly, in 2004 PRHTA sought to subvert the State Expropriations Court by an arbitrary and irrational Unconstitutional Expropriation case KEF 04-162 of yet another portion of the remaining Castro property. At that time PRHTA sought to conceal the fact that this was but an attempt to evade the federal courts' *original* jurisdiction in the matter of the Improper Drainage. Unfortunately, once again Codefendant López-García acted as a willing accomplice despite his lack of jurisdiction due to the Physical Demarcation. Furthermore, Codefendant López-García himself had previously acknowledged that he lacked jurisdiction in matters of the Improper Drainage; and was fully aware that these matters had been *sub judice* at the federal courts for years. What is more, PRHTA's contentions in this regard are completely unsubstantiated and irrational –as stated repeatedly by the Castro family, if there was *any* basis for PRHTA's allegations, they would have answered the Complaints long ago. Instead, PRHTA's allegations regarding the Improper Drainage are submerged in a myriad of variations and contradictory statements; including the fact that PRHTA's actions are tantamount to confirming the illegal concealment of an

adverse environmental impact in contravention of environmental law (e.g. 12 LPRA §1136 (e))

20. A third major aspect of case 04-2324 JAF is the subversion the State Expropriations Court involving the Unconstitutional Suppression of Evidence by Codefendant López-García. Once again, it has been well established that the State Expropriations Court has no jurisdiction whatsoever to rule upon matters of Improper Appraisals; and in this regard it is the federal court that has held *original* jurisdiction in the situation at hand. Further, as noted in the Complaint (paragraph 5.6.3) PRHTA yet again contradicted itself by submitting yet a *second* fraudulent appraisal –which is tantamount to declaring itself in DEFAULT.

On the other hand, Codefendant López-García's only jurisdiction in case KEF 98-904 was to determine the monetary value of Just Compensation for the parcel defined in the Physical Demarcation. In this very specific jurisdiction, Codefendant López-García was free to select a value independently of any appraisal or submittal by any of the parties –including the deficient appraisals by PRHTA. However, the problem that emerges (e.g. Complaint, subsections 5.6-5.8) is not merely that Codefendant López-García favored PRHTA's improper appraisal values; the problem is that Codefendant López-García has completely departed from his jurisdiction in an arbitrary and irrational attempt to suppress the evidence contained in the Castro appraisal. Stated differently, it is one thing for Codefendant López-García to select the value of compensation; but it is an altogether a different matter for Codefendant López-García to subvert the court –and attempt to legitimize PRHTA's Improper Appraisals by suppressing the available evidence. Codefendant López-García's actions are not only in disregard for common knowledge, basic notions of fairness, and *any* rationality; but they are also specifically rendered unconstitutional by decisions of the Supreme Court of

Puerto Rico in a long line of cases including *Pueblo v. Amadeo*, 82 DPR 102 (1961).

21. Consequently, case 04-2324 JAF emerges subsequent to the previous cases; and due to the attempt by PRHTA and the Codefendants to deprive the Castro family of the Equal Protection of the Law. Furthermore, as noted in the Castro-Brief (paragraph 6.0.31): "the egregious nature of the manipulation of the state court reveals allegations [...] which are so completely *contradictory* with the previous cases, that a Judgment by DEFAULT against the defendants is called for that encompasses the entire ensemble [of cases]."

22. Unfortunately, the District Court did not heed the Castro family's pleadings; nor did it grant so much as a Hearing or the requested Discovery –it simply blindly embraced the Codefendants contentions; and dismissed...

REASONS FOR GRANTING THE PETITION

1. The Castro family requests no favors; but only to exercise their right to have their day in court in a trial by jury. This right is guaranteed to all American citizens regardless of origin or location.

2. The right to obtain redress from the courts is well established in the Seventh Amendment to the Constitution of the United States of America, which guarantees a trial by jury in civil cases. Indeed, since the very beginning –and throughout the nation's history– this COURT has repeatedly noted that this fundamental right is inextricably entwined with other provisions of the U.S. Constitution and the notion of liberty itself:

> *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, (1803):
>
> "The very *essence of civil liberty* certainly consists in the right of every individual to claim the protection of the laws, whenever he

> receives an injury. One of the first duties of government is to afford that protection."
>
> *Chambers v. Baltimore & O.*, 207 U.S. 142, (1907):
>
> "The Right to sue and defend *in the courts* is the alternative to force. In an organized society it is *the Right conservative of all other rights* and lies at the foundation of orderly government."
>
> *Bracy v. Gramley*, 520 U.S. 899 (1997) (describing Judicial Due Process even for a convicted felon): "[...] the floor established by the Due Process Clause clearly requires a "*fair trial* in a *fair tribunal*," before a judge with *no actual bias* against the defendant *or interest in the outcome* of his particular case."

Furthermore, the courts are compelled to defend this right to trial by the mandate of the Federal Rules of Civil Procedure; all of which "shall be administered and construed to secure the just, speedy, and inexpensive determination of every action" (FRCivP Rule 1).

3. The aphorism that "power corrupts and absolute power corrupts absolutely" is sadly still very much applicable to human affairs. Indeed, in many nations the ability to enforce the law and protect the average citizen is all but inexistent.

The United States of America stands as a symbol of democracy throughout the world. The nation is not immune from human frailty; but has struggled to overcome such limitations. In this regard, this COURT has played an important part in ensuring that the rights set forth in the U.S. Constitution are available to *all citizens* –particularly in regard to Due Process and the Equal Protection of the Law.

Thus, this COURT has established that "No man in this country is so high that he is above the law" (*U.S. v. Lee*, 106 U.S. 196 (1882)). Further, this COURT recognized that in order to protect citizens' rights, 42 USC §1983 set forth the mandate to "[...] *interpose* the federal courts

between the States and the people, as *guardians* of the people's federal rights [...]". (*Mitchum v. Foster*, 407 U.S. 225) Moreover, this COURT established that the guarantee of the Equal Protection of the Law extends beyond particular groups to encompass each citizen, which individually could be considered as a "class of one". Indeed, in *Willowbrook v. Olech* this COURT rejected the notion that the denial of water to an elderly couple was merely a minor incident in a small Midwestern community. All to the contrary, the Olech family had a constitutional right to the Equal Protection of the Law that allowed for water service in their locality; and this right could not be wantonly infringed by public officials – particularly if these officials were acting in an "arbitrary and wholly irrational" manner. The fact that water service is of such fundamental necessity; and that the Olechs were an elderly couple; only serves to aggravate the unconstitutional nature of that situation.

4. Further, though the matters at hand are simple and straightforward –this does not diminish their importance. To the contrary, when fundamental rights are infringed there must be heightened concern of a threat to basic notions of fairness and the foundations of society itself.

Consequently, this COURT has acted under the principle that the freedom and general welfare of the nation rests upon the rights and prosperity guaranteed to its individual citizens; and that it is by this means that we achieve the constitutional goal of securing "the Blessings of Liberty to ourselves and our Posterity".

5. Thus, the federal courts not only have the ineluctable mandate to *interpose* (*Mitchum v. Foster*) in defense of citizens' rights; but also this Honorable COURT has repeatedly made every effort to provide citizens with unencumbered access to the federal forum. In *Monroe v. Pape*, 365 U.S. 174 this court established that: (our emphasis throughout) "[42 USC §1983] was passed was to afford a *federal right in federal courts*

because [...] *state laws might not be enforced* [...] the *Fourteenth Amendment might be denied by state agencies.*" (also that there is *no* requirement to exhaust state *judicial* remedies) Similarly, *Patsy v. Board of Regents*, 102 S.Ct. 2557 (1982) proclaims that, under 42 USC §1983, the federal courts are to "throw open their doors" and provide "*immediate access* to the Federal Courts *notwithstanding any state provision to the contrary*". (also that there is *no* requirement to exhaust state *administrative* remedies before seeking the protection of the federal courts)

Further, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) provides relevant principles and doctrine in the case at hand. Lavergne Logan was entitled to a hearing in a matter of employment discrimination; but through bureaucratic bungling he was denied this right. It would have been a simple matter for the state to have corrected this situation, but it *refused* to do so. Thus, the deprivation arose not from mere error; but from a state policy of indifference for citizen's rights –a systemic deprivation in which the state regularly refused to correct such improprieties; and exacerbated by the lower court's endorsement of such refusal. Moreover, the state's refusal to correct the situation stands in contravention of good faith and basic notions of fairness. As stated by Justice Blackmun: "rationality is absent here"; and the state had run afoul of the "lowest [most basic] level of permissible equal protection scrutiny". Additionally, *Logan* points to other relevant principles: (our emphasis) (a) The *same set of facts* gave rise to the deprivation of *both* Due Process (main opinion) and the Equal Protection of the Law (separate opinions); (b) Constitutionally protected property interests are "*varied*" and often "intangible", "relating to the whole domain of social and economic fact". (c) *Predeprivation* protection cannot be denied in favor of post-deprivation remedies.

6. In turn, the courts are compelled to act upon only but the proverbial "scintilla" of evidence. In the

matters at hand, the Castro family has by far exceeded this requirement. More importantly, the ensuing six (6) years of litigation at the federal courts have yielded overwhelming evidence in favor of the Castro family's position –and such evidence is readily available *in the very record* at the federal court itself.

7. Therefore, in the case at bar the Federal Courts enjoyed not only *original* jurisdiction; but also the strongest possible mandate and jurisdiction established under the aegis of 42 USC §1983. Such jurisdiction cannot be abandoned lightly.

8. Furthermore, in the situation at hand there is the inherent contradiction of the failure of powerful government agencies to simply answer the complaints. The government agencies did not have to "defend" anything; but had merely to justify their very own actions in the matters at bar –which should be readily available given over thirty (30) years of planning and the expenditure of untold Millions of dollars in consulting and engineering fees. In contrast, the defendants have answered nothing in six (6) years of litigation. Furthermore, throughout the litigation the defendants have essentially evaded the issues set forth in all the Castro family's pleadings; such that these issues remain *unaddressed, unrefuted,* and therefore *unopposed.*

Indeed, it is now manifest that that the defendants have not answered because no answer is possible: they cannot justify the unjustifiable nor excuse the inexcusable. Instead, they have resorted to evading the issues altogether. Moreover, PRHTA's attempts to evade the scrutiny of the federal court, and the *contradictory* nature of their pleadings, have laid waste to their allegations and only call for a Judgment by DEFAULT against their position and in favor of the Castro family.

The detrimental consequences of the government's actions cannot be overstated: on the one hand, at risk are the many Millions of dollars entrusted to these agencies; on

the other hand, these actions are "arbitrary and wholly irrational" –and thereby prejudicial to citizens' rights.

9. It is well recognized that FRCivP Rule 12(b) allows for dismissal. However, it is equally clear that that dismissal is to be treated as an exception; and that a plaintiff's right to trial by jury cannot be extinguished lightly. Indeed, the District Court has professed to safeguard the Castro family's rights; and has outlined the so-called "Rule 12 Standard" (e.g. 03-1287 RLA Docket-No. **48,** App- 26): (a)"the court will accept all factual allegations *as true*" and "will make all reasonable inferences *in plaintiff's favor*"; (b) "Our scope of review under this provision is a *narrow one*." (c) "The complaint will be *dismissed if* the court finds that under the *facts as pleaded* plaintiff may *not prevail* on *any possible theory*."

Consequently, in light of the overwhelming evidence on record; and of the defendants' inability to respond or address the issues; the Complaints remain essentially unchallenged –and therefore must be accepted as true, thereby allowing the cases to proceed to trial. Unfortunately, this was not to be.

10. Why then, have the lower courts denied the Castro family their constitutional right to a trial by jury for the *past six* (6) *years* –and particularly in the case at hand??? What possible justification can the lower courts provide for their actions? The result is clear: *neither* the lower courts *nor* the defendants have provided *any basis whatsoever* for depriving the Castro family of their day in court.

Instead, the lower courts have blindly embraced and embellished the incongruous and malicious contentions by PRHTA and its associated Codefendants. The lower courts have effectively attempted to shroud PRHTA and its accomplices with an improper and inexistent *immunity*. In so doing, they have divorced themselves from the facts; and have acted in contravention of the law and of the doctrine set forth by this Honorable COURT.

Indeed, the lower courts have in effect altogether suppressed the Equal Protection of the Law.

11. No one would argue against road building –an important and well established public function. All to the contrary, the issues here involve the state's *disregard* for the public interest; and revolve around PRHTA's manifest Over-arching Policy of Callous Indifference to Citizens' Civil Rights. Abuse of Power and other improprieties can unfortunately contaminate any public agency. As noted previously, Codefendant LPC&D was involved in a bribery scandal regarding a major aqueduct; PRHTA has been declared a "high-risk" of malfeasance of federal funds; the former president of the state House of Representatives is in prison for manipulations involving hospitals; the former state Secretary of Education is also in prison for corruption; etc., etc... Thus, by suppressing the Equal Protection of the Law in the case at hand, the lower courts have only but fostered a State of Lawlessness; which in turn cries out for the supervisory powers of this Honorable COURT. As stated in *Logan*: "rationality is absent" in the actions of PRHTA and the lower courts.

12. The situation is manifest in the decision by the First Circuit in Appeal 05-1942 (APP-4). To begin, the Castro family had specifically beseeched that court to provide a published decision that truly reflected proper legal standards and legal analysis –but this request was suppressed and denied. Instead, the First Circuit's Decision appears to be of lesser quality; and consists of a few hasty and conclusory paragraphs. The requirement upon appeal was not the proffered and alleged "thorough review"; rather, the requirement was for *de novo* review – but there is no indication of any such effort. Unfortunately, it appears that the Court of Appeals has merely mimicked the District Court; has completely suppressed the facts; and has only but compounded the problem by attempting to embellish failed allegations.

Indeed, despite extensive pleadings regarding the Equal Protection of the Law and the doctrine of *Willowbrook v. Olech*; this also was completely suppressed. In like manner, despite considerable pleadings on the doctrine of *Semtek v. Lockheed Martin*, 531 US 497 and *res judicata*; once more, these matters were also suppressed.

13. In fact, the First Circuit's Decision suppressed *all* the matters set forth in the Statement of Issues of the Appeal. There simply is no mention whatsoever of Improper Surveys; the Physical Demarcation; the Unconstitutional Dispossession and Destruction; the Unconstitutional Expropriation; the *Bogus* Eviction Order; the Unconstitutional Suppression of Evidence; the subversion of the State Expropriations Court; etc. Further, the First Circuit suppressed a particularly poignant issue that demonstrates the grievous nature of PRHTA's Over-arching Policy of Callous Indifference to Citizens' Civil Rights: (Appeal 05-1942 Castro-Brief ¶5.5)

> "The [District Court] [embraced] [...] jaundiced pleadings in disregard of the facts; which has only resulted in grievous injustice. [...] has deprived the Castro family's right to joinder in contradiction of the Federal Rules of Civil Procedure; and without Due Process and a Hearing. PRHTA's actions do not address the issues at hand; and only reflect an attempt to conceal the Abuse of Power against a defenseless elderly couple"

The wanton and malicious nature of this particular issue is exacerbated by the fact the what PRHTA and District Court proposed was to deprive this plaintiffs' *87 year-old bedridden* mother of the right to join in the defense of her own property!!! To add insult to injury; PRHTA also proposed to deprive this plaintiff's sister, who lives *thousands of miles away*, of the right to join as a family in the defense of our common property.

PRHTA's devious interest in suppressing the presence of this plaintiff's elderly mother is all too clear: the

similarities with *Willowbrook v. Olech* are too great; PRHTA's irrational actions are too evident; and society does not take kindly to those that abuse the elderly.

14. Indeed, the arbitrary and irrational nature of PRHTA's action is manifest at every turn; beginning by the fact that the District Court had previously recognized the Castro family's joinder in a common set of claims – only to arbitrarily reverse its position without stating any legitimate reason for doing so. Further, common knowledge dictates that shared ownership of the property would require the presence of the entire Castro family in any relevant action. Similarly, basic notions of fairness reject the imposition of arbitrary burdens.

15. PRHTA not only suppresses these simple facts; but also proceeds to grossly misrepresent the law –all with the blind acquiescence of the District Court. PRHTA maliciously invokes Local Rule 83.1 h (see APP-64) insisting that this Plaintiff is somehow "representing" other members of the Castro family –to which the District Court has added a blind chorus that its precious local rule has been violated.

But PRHTA's misrepresentations collapse upon the slightest contact with the facts. On the one hand, as a matter of law, Local Rule 83.1 h is utterly inapposite and inconsequential to matters of joinder. But more importantly, it is glaringly obvious that *no one* in the Castro family is "representing" anybody. Even PRHTA has grudgingly admitted that this plaintiff can act *pro se*; and is *asserting* his *own* claims. But this plaintiff and his sister also share the *same* claims inherited from the *same* persons (first our father, now also our mother). Indeed, it is unconscionable that PRHTA should have attempted to suppress the obvious fact all three Castro *pro se* plaintiffs (at that time) constituted the *same* family; that shared the *same* property; and that are joined together in the *same* claims and in the *same* action.

16. But what is even more grievous is that the Castro family's abundant pleadings on these very obvious

facts were suppressed –and even a Hearing was denied. Furthermore, the District Court not only has embraced the misrepresentation of Local Rule 83.1 h; but has also acted in *contravention* of the Federal Rules of Civil Procedure.

17. The Castro family's right to joinder is guaranteed by FRCivP Rule 20 (a); and such joinder was explicitly stated in the very first paragraph of every single Castro pleading in the case at hand. Furthermore, FRCivP Rule 19 (2)(i) compelled the District Court to recognize the obvious fact that all the members of the Castro family were *necessary parties*, which must be included in the relevant action. The District Court has no authority to suppress the Castro family's right to the Equal Protection of the Law –particularly when there have been repeated pleadings invoking the protection of such laws.

18. This entire issue is further compounded by the standard set forth by the very Court of Appeals:

"By its *supervision of the bar* and through its reliance on the lawyers before it, the court is enabled to function. Professional *competence* and professional *responsibility* are the sine qua non of federal litigation and effective judicial response." (quoting *C.E. Pope Equity Trust v US*, 818 F.2d 696, our emphasis)

Thus, the lower courts have a mandate to *oppose* misrepresentations of law and fact, or any other abuse, launched by powerful state agencies and their legal minions –instead of blindly embracing such actions.

19. Consequently, in this matter the First Circuit was requested to reverse the District Court; and reaffirm the Castro family's right to joinder under the law –but it refused to do so. It tacitly recognized the problem and allowed the Castro family to proceed with the Appeal; but refused to address the grievous suppression of the Equal Protection of the Law that is at the root of the situation –

and as noted previously, this entire issue was suppressed from the First Circuit's Decision.

20. What is more, the issue described above outlines the *improper pattern* developed by PRHTA and the lower courts in an effort to imbue PRHTA and the Codefendants with an improper and inexistent immunity. As noted in the foregoing, it involves the suppression of the facts; the misstatement /misrepresentation of the law and the Castro family's position; the contravention of well established law; and the outright suppression and deprivation of the Castro family's right to the Equal Protection of the Law.

21. Indeed, in yet another manifestation of this *improper pattern*, fully half of the First Circuit's Decision (2 paragraphs of the scanty 4 paragraph document) is expended in a contrived effort to buttress a non-existent immunity for Codefendant Judge López-García. Recall that in paragraphs 16-20 of the Statement of the Case it was noted that Codefendant López-García had acted as a willing participant in the subversion of the State Expropriations Court; and had acted utterly without *any* jurisdiction whatsoever in the matters of the Unconstitutional Dispossession and Destruction, the *Bogus* Eviction Order, the Unconstitutional Expropriation, the Unconstitutional Suppression of Evidence, etc. Consequently, his actions were non-judicial acts that were arbitrary and irrational; and in contravention of statutes, legal doctrine, basic notions of fairness, and any semblance of the Equal Protection of the Law.

In regard to Codefendant López-García, the District Court (App-20) suppressed the pleadings and all reference to law; and proceeded to arbitrarily misstate that "suppression of evidence", and the refusal to investigate and/or the acceptance of "improper documents and/or improper surveys", were somehow taken in a "judicial capacity". Further, the District Court acknowledges that "actions taken in the clear absence of all jurisdiction will

deprive a judge of absolute immunity"; but then openly contravenes the jurisprudence of this COURT by granting a facially deficient and non-existent immunity.

22. Next, the First Circuit's Decision also suppresses the Castro family's pleadings; and altogether evades the facially deficient allegations of the District Court. In particular, the Court of Appeals suppresses the fact that *Pulliam v. Allen*, 466 U.S. 522 (1984) calls for the Federal Court to intervene when a state judge is openly engaged in unconstitutional actions. Further, the First Circuit *fails* to note that the Castro family's Complaint [e.g. paragraph 12.0.7] *only* requests *declaratory* relief against Codefendant López-García. In fact, the Castro family's Brief [9.5.10] specifically notes that, under 42 USC §1983, in 1996 Congress curtailed injunctive relief against judges in favor of *declaratory* relief; i.e., injunctive relief would be available as an exception when there was some impediment to *declaratory* relief.

Injunctive relief was requested from the *other* Codefendants –*not* from Codefendant López-García. *Pulliam* was superseded in regards to injunctive relief – but *not* in regards to the *declaratory* relief requested by the Castro family.

23. Despite the simple and explicit fact that the Castro family's Complaint [e.g. subsection 9.0; paragraph 12.0.7] does *not* request *any* injunctive relief whatsoever from Codefendant López-García; the Court of Appeals has wandered far, far afield and has contrived and misstated an unsubstantiated so-called "exception" –regarding a non-existent injunctive relief. Further, the First Circuit compounds matters by misstating that the Castro family has somehow failed "to argue" about irrelevant "statutory exceptions"; and aggravates the situation by alleging that this will somehow legitimize the facially deficient and non-existent immunity advanced by the District Court.

24. Consequently, it is the Court of Appeals who has *failed* to recognize the issues and claims –and it is the

lower courts that have followed an *improper pattern* and have suppressed the Equal Protection of the Law. It is well understood that the lower courts have ample discretion to decide upon the matters under their legitimate jurisdiction; however, they have NO discretion whatsoever to tamper with the plaintiffs' claims and pleadings; NOR to fabricate their own claims or otherwise manipulate the pleadings. Such actions by the lower courts constitute a gross abuse of discretion that requires the supervisory powers of this Honorable COURT.

25. But there is more. The First Circuit's Decision again resorts to the *improper pattern* and conjures the misapplication of the Rooker-Feldman doctrine; while also grossly misstating and contravening the jurisprudence of *Exxon-Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

The Court of Appeals' contentions are entirely based on State Expropriations Court's judgment of November 2003 in case KEF 98-904; and attempt to *fabricate* the notion that such decision is dispositive of the case at bar filed a *year later* (2004) –such contentions are immediately torn asunder by the simple facts. Issues of the Unconstitutional Dispossession and Destruction; the Physical Demarcation; the Unconstitutional Expropriation; etc.; are nowhere to be found in the aforementioned judgment by Codefendant López-García. This is beyond dispute; they simply do not exist in such document. Further, recall that as stated previously: "the jurisdiction of State Expropriations Court is confined to the *single* issue of Just Compensation". The First Circuit's Decision has completely suppressed this fundamental fact; and has also *refused* to heed the very explicit warnings set forth in the very first pages of the Complaint: (Prefatory) '[...] let there be no obfuscation: this complaint does not seek any "just compensation"; nor does it seek to "overturn" any state court decision.'

26. Indeed, the Court of Appeals has contravened the Rooker-Feldman doctrine: the issues at bar are *not*

controlled by any prior state decision; *nor* does the Complaint seek to "overturn" any such state decision. This is only aggravated by invoking the totally inapposite *Federación de Maestros v. Junta de Relaciones del Trabajo*, 410 F.3d 17, 24 (1st Cir. 2005). Further, the Court of Appeals has compounded this departure by acting in gross contravention of *Exxon-Mobil*; which itself rejected Rooker-Feldman; and which rejects the First Circuit's Decision, establishing that even in "parallel" litigation, Rooker-Feldman "is not triggered simply by the entry of judgment in state court". Moreover, *Exxon-Mobil* demolishes the manipulations by the Court of Appeals stating that Rooker-Feldman is limited to "narrow ground" and "confined to cases of the kind from which the doctrine acquired its name". In fact, *Exxon-Mobil* emphasizes that Rooker-Feldman does *not* apply when the Federal Court has *original* jurisdiction; *nor* when there is an *independent claim*, even if such claim "denies a legal conclusion that a state court has reached". This again destroys all remnants of the First Circuit's Decision; since in the relevant issues the federal courts have always held *original* jurisdiction; and the Complaint is indeed *independent* of the state's 2003 judgment.

27. In fact, First Circuit's Decision contravened both Rooker-Feldman and *Exxon-Mobil* only to find itself once again impaled upon the matter of jurisdiction –which is particularly grievous in regard to the non-existent immunity granted to Codefendant López-García. Indeed, *Exxon-Mobil* (quoting *Rooker*) establishes that the very starting point in the doctrine is whether "the state court had acted within its jurisdiction"; furthermore (quoting *Feldman*) the "jurisdictional inspection" must address the "*crucial question*", that is, whether the state proceedings were "judicial in nature" –otherwise, *Feldman* itself rejects the Rooker-Feldman doctrine when the actions of the court are "legislative" or non-judicial acts. Codefendant López-García's sole jurisdiction is to independently determine a cash amount –whether by learned analysis; bumbling ignorance; gross bias; "voodoo

incantations"; or otherwise. Any other actions by Codefendant López-García are beyond his jurisdiction; and therefore are *non-judicial acts*.

28. The Court of Appeals has utterly failed to address the "*crucial question*"; and has only but suppressed the District Court's facially deficient allegations granting a non-existent immunity –as well as suppressing glaring evidence such as the *Bogus* Eviction Order; manifestly a non-judicial act that is fraudulent and criminal in nature (currently *sub judice* as such in case 06-1313 FAB (CCC)). (see Definitions App-70)

29. More importantly, the *callousness* of the lower courts in granting a non-existent immunity to Codefendant López-García is troubling. In *Pulliam* this Honorable COURT exercised its jurisdiction and acted decisively to prevent a judge from inflicting unconstitutional punishment for minor offenses. In contrast, in the case at bar we find the lower courts all too willing to *abandon* their jurisdiction in gross contravention of the law and of their mandate. Codefendant López-García has judicial power over more than Three Million American citizens who have not committed any violation of law at all –yet the lower courts appear willing to allow him to deprive this population of the Equal Protection of the Law.

30. In granting a non-existent immunity, the lower courts have endorsed the Unconstitutional Suppression of Evidence; which implies the total subversion of a state court with a policy that not only will gleefully welcome PRHTA's fraudulent appraisals –but also will arbitrarily and irrationally suppress legitimate evidence in legitimate appraisals. Further, such non-existent immunity would allow Codefendant López-García's non-judicial acts to rampage far and wide; including the endorsement of Improper Surveys, Improper Drainage, Unconstitutional Dispossession and Destruction, etc. In effect, the State Expropriations Court becomes but a branch office of PRHTA; and a tool which PRHTA uses to

escape federal jurisdiction; to suppress the Equal Protection of the Law; and to inflict untold damages upon the population.

If the lower courts wanted to support Codefendant López-García; they should have addressed the issues six (6) years ago at trial in case 00-1970 RLA. Instead, they have abandoned their jurisdiction; thereby allowing matters to deteriorate; and thereby allowing Codefendant López-García to succumb to pressures from PRHTA. Now it is too late; Codefendant López-García's non-judicial acts cannot be condoned in detriment to entire population. NO one is above the law.

31. In yet another manifestation of the previously mentioned *improper pattern*, the lower courts attempt the perhaps the ultimate suppression: without addressing any issue whatsoever, they deprive the Castro family of a *full and fair opportunity* to litigate its claims by mere unsubstantiated proclamations of *res judicata*. It is well understood that *res judicata* cannot be used to work such injustice. Thus, far from *de novo* review, in but a single sentence the First Circuit's Decision merely accepts the entire notion of *res judicata* as advanced by PRHTA and others; and as blindly embraced by the District Court. Moreover, the Court of Appeals completely suppresses the extensive entreaties by the Castro family exposing that the District Court had glaringly failed to comply with *any* of the criteria for *res judicata* –far from "the most perfect identity" required by 31 LPRA §3343, the cases in question are separate and distinct; and occurred in different time periods with different issues, different parties, and involved different remedies. (e.g. Castro-Brief 6.0.10; 9.1-9.3; Reply to PRHTA-Brief AR-5.0)

Indeed, the First Circuit's Decision launches much talk of "relitigation", but there is no showing of just what it alleges is being relitigated –much less *any* showing of *any* prior decision that precludes *anything at all*. In fact, upon inspection, the lower courts' previous decisions do not address the issues; and are revealed as NULL and VOID.

32. Once again the Court of Appeals egregiously misstates the facts; and attempts to circumvent the obvious difference in time periods between the cases by alleging that case 03-1287 RLA could have been "amended"; and that the new claims "should have been added" to this previous case. To begin, the Castro family is the master of its own Complaint; and the Court of Appeals' has not provided any requirement for any joinder, or any other modification of any claims. More importantly, the Court of Appeals' contentions are utterly false and physically IMPOSSIBLE. As noted in the Statement of the Case, the Castro family repeatedly addressed the lower court in case 03-1287 RLA, but the record shows that the District Court fell into a state of inaction and delay; simply did not respond ANYTHING at all –and blindly proceeded to close the case in March 2004. Further, the Court of Appeals also refused to listen.

33. Additionally, the Castro family rejects allegations of any "admissions". In fact, the First Circuit's Decision has misstated and misconstrued the Castro family's claims, which involve the subversion of the state court and are not merely a matter of "invasions"; and which could not be included at all in the previous 03-1287 RLA. Once again, the record shows that it was also physically IMPOSSIBLE to include those claims in the prior cases because they only came into existence *well after* the previous cases were *closed* (March 2004). Indeed the Unconstitutional Dispossession and Destruction only became manifest in November 2004; the *Bogus* Eviction Order is dated in December 2004; even the Unconstitutional Suppression of Evidence became manifest only by July 2004; etc.

Furthermore, contrary to the First Circuit's Decision, PRHTA's Over-arching Policy of Callous Indifference to Citizens' Civil Rights involves a *continuing* violation that is normally not subject to *res judicata*. (*Lawlor v. National Screen Service*, 349 U.S. 322)

34. Any search for the so-called "relitigation" will only lead to the lower courts' failed allegations and misstatements. The District Court (App-18) has only embarrassed itself by alleging that the parties in the different cases are "substantially identical", when over 60% or more of the parties are *different* (APP-69). Similarly, the District Court (App-20) again misstates that issues of the Equal Protection of the Law have been decided –which is utterly false, and not even the words "Equal Protection" can be found in the prior decisions. Further, the Court of Appeals (App-24) compounds this embarrassment by attempting to dismiss a prior case based on "attorneys fees"; when in fact the Castro family was acting *pro se* and such "fees" did not exist. Etc.

35. Yet the First Circuit's Decision brazenly insists that they have affirmed a so-called "final decision"; and that the Castro family is "wrong". However, the Court of Appeals fails to demonstrate *any* so-called "final decision" that has *any preclusive effect* whatsoever –especially since they completely contravene the *res judicata* doctrine. In particular, they contravene the *Semtek* criteria: whether the *substance* of the Castro claims has been actually and fairly *litigated* –with an *adjudication* of such *substance*.

Conclusion

Consequently, we respectfully beseech this COURT to reverse the decisions of the lower courts; and allow the Castro family the right to have their day in court. The record itself presents a volume of evidence that points toward a prompt resolution at trial.

Respectfully submitted,

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